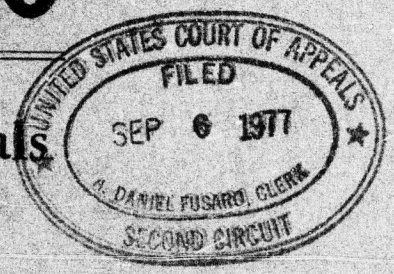
United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

77-7200



United States Court of Appeals
FOR THE SECOND CIRCUIT

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs-Appellees,

against

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant-Appellant.

BRIEF ON BEHALF OF PLAINTIFFS-APPELLEES

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Assuming arguendo, but not conceding that the Defendant Scavo has the Constitutional right to submit referenda for a vote by the membership of the Offshore Division which cannot be restricted by the International Convention and that he has the final authority to interpret the International Constitution, the existence of such powers, would at the least, raise serious questions of the validity and enforceability of the Union Constitution. . . . . .

A. The interpretation of the Constitution by the International Convention denying the existence of these rights was fair and reasonable, and the decision of the Court below approving such interpretation was correct and should be affirmed. . . . . .

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IN THE

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FOR THE SECOND CIRCUIT

Docket No. 77 - 7200

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs-Appellees,

- against -

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant-Appellant.

BRIEF ON BEHALF OF PLAINTIFFS-APPELLEES

PRELIMINARY STATEMENT

In accordance with the provisions of Rule 28 (i) of the Rules of Appellate Procedure, Appellees Johnson, Hemming, Larson, Thompson and Valentine adopt by reference the statement of the case, the statement of the facts, the discussion of the course of proceedings and the disposition below, the statement of the issue presented and the arguments set forth in the brief

submitted on behalf of the International Organization of Masters, Mates and Pilots (hereinafter referred to as the Union) and it subordinate body, the Offshore Division.

As this brief is written, the writer is unaware of any disposition of the motion for a change in caption herein, dated August 18, 1977, made by the aforesaid bodies. However, as stated in the moving affidavit of Marvin Schwartz, Esq., dated August 18, 1977, submitted in support of said motion, the position of the Union and its subordinate body is clearly aligned with that of Plaintiffs-Appellees Johnson et al, regardless of the caption.

In addition to the arguments set forth in the aforesaid brief, adopted herein by reference, further argument is set forth below.

FURTHER ARGUMENT

POINT I

ASSUMING ARGUENDO, BUT NOT CONCEDING THAT THE DEFENDANT SCAVO HAS THE CONSTITUTIONAL RIGHT TO SUBMIT REFERENDA FOR A VOTE BY THE MEMBERSHIP OF THE OFFSHORE DIVISION WHICH CANNOT BE RESTRICTED BY THE INTERNATIONAL CONVENTION AND THAT HE HAS THE FINAL AUTHORITY TO INTERPRET THE INTERNATIONAL CONSTITUTION, THE EXISTENCE OF SUCH POWERS, WOULD AT THE LEAST, RAISE SERIOUS QUESTIONS OF THE VALIDITY AND ENFORCE-ABILITY OF THE UNION CONSTITUTION.

A. THE INTERPRETATION OF THE CONSTITUTION BY THE INTERNATIONAL CONVENTION DENYING THE EXISTENCE OF THESE RIGHTS WAS FAIR AND REASONABLE, AND THE DECISION OF THE COURT BELOW APPROVING SUCH INTERPRETATION WAS CORRECT AND SHOULD BE AFFIRMED.

We will not repeat herein at length the various arguments made by the Union and the Offshore Division to the effect that the Constitution of the Union does not give the Defendant-Appellant Scavo the authority to initiate, by his own action, referenda to be submitted to the membership to amend the Offshore Division By-Laws, or the argument that the President does not have the final authority to interpret the International Constitution.

We are in complete accord with the argument that the Offshore Division By-Laws may be amended only in accordance with the specific procedures set forth in Article XVIII, Section 1 of the Offshore Division By-Laws.

Plaintiffs point out that at no time has there been any question by any party to this case, nor by the Court below as to the validity of the aforesaid provision of the Offshore Division By-Laws, nor has there been any question of the right of the Plaintiffs to have their proposed amendment to the Offshore Division By-Laws submitted to the membership for a vote, the said proposed amendment having arisen by means of a petition signed by 15% of the Division's members in good standing.

To restate the issue in a slightly different fashion, what is presented here is not only the question of the Defendant Scavo's power under the Constitution of the Union to initiate referenda, but a question of his power to initiate a referendum in direct and physical juxtaposition to a referendum properly initiated by a petition signed by 15% of the Division's members in good standing.

We shall not enter into the argument contained in the briefs of the other parties hereto on the subject of whether or not the resolutions of the International Convention amounted to amendments or interpretations of the Union's Constitution; we believe it patently clear that they were interpretations and not amendments, and were so described by Judge Pierce in his

order of March 14, 1977.

As such, the importance attached to the interpretations and resolutions of the International Convention by Judge Pierce was completely justified by the provisions of Article IV, Section 1 of the International Constitution of the Union which provides that the International Convention is "the source of all true and legitimate authority over the Organization, and possesses as such, supreme and absolute power over same and all channels leading thereto. . . . ."

Further, assuming that the International Convention had the power, as held by Judge Pierce, as argued by the Union in its brief, pursuant to the Union Constitution to promulgate the resolutions involved herein, it does not appear to us that there is any question but that said resolutions set forth interpretations of the Constitution which were fair and reasonable.

Our contention in this respect is buttressed not only by a fair reading of the Union Constitution and the Offshore Division By-Laws themselves, and not only by the ratio decidendi found in Judge Pierce's opinion, but also by the arguments in the Union's brief and the arguments set forth below.

We point out that in paragraph THIRTEENTH of the complaint herein (A-6), it is alleged, inter alia, that

the Defendant-Appellant Scavo acted in a manner not only contrary to the Constitution of the Union and contrary to the By-Laws of the Offshore Division, but also that the Defendant-Appellant Scavo acted in violation of Title 29, U.S.C.A., Sections 411, (a), (1), (2), and (3).

These sections deal specifically with a bill of rights of members of labor organizations, including equal rights, freedom of speech and assembly, and matters pertaining to dues and assessments, all of which subjects are dealt with in the amendment proposed by the petition signed by 15% of the Offshore Division's members in good standing.

On the basis of the Congressional declaration of findings, purposes and policy as set forth in Labor Management Reporting and Disclosure Procedures, Title 29, U.S.C.A., Section 401, and on the basis of various cases cited below interpreting this statute, we believe that it could be argued that if this Union's Constitution were to be given the interpretation placed upon it by the Defendant-Appellant Scavo and his counsel, it would be unenforceable, as a matter of law. To give the Union Constitution the interpretation of its President and of his counsel, would be to render the Constitution devoid of the principles of union democracy which the statute is designed to promote.

The Defendant Scavo's position that the President has the Constitutional right to submit referenda for a vote by the membership of the Offshore Division which cannot be restricted by the International Convention and his position that the President has the final authority to interpret the International Constitution, was characterized by his own counsel (A-113) as one wherein if the President was wrong, the only resort was to the courts. The Defendant's position is and was that there was no machinery within the Union Organization by which the President's power could be limited with regard to the action he sought to take in this case.

If the Constitution were read to mean what the Defendant says it means, it could well be argued that the Constitution would violate democratic principles as applied to the rights of Union members, and the Constitution would be unenforceable under the statute above referred to.

There is no reason or basis in this record or on the argument made by Appellant upon which to conclude that this Union's Constitution was intended as a matter of contract amongst its members, or otherwise, to set up an autocracy, such as claimed by the defendant. This is particularly true since such autocracy might invalidate

the Constitution itself. The defendant has not cited any instance of the exercise in this Union of the power he claimed on the occasions here in question.

In the light of these considerations, the interpretation placed upon the Union Constitution and the Offshore Division By-Laws by the International Convention, as expressed in its resolutions, particularly Resolution #57 (A-25) were both within its powers as "the source of all true and legitimate authority over the Organization. . . . .", and were fair and reasonable.

These interpretations preserved the rights of the Plaintiffs to have their proposed amendment voted upon without interference or confusion and without risk of obtaining a vote constituting less than a majority vote; these interpretations preserved the rights of the membership to a clear vote; these resolutions preserved, and Judge Pierce in his order preserved the alternative method of proposing amendments to the Offshore Division By-Laws by means of submitting to the membership proposals initiated by a majority of the Offshore Division Executive Council.

These interpretations were such that the Union Constitution would not violate the aforesaid statute.

Cases are legion to the effect that the Labor Management Reporting and Disclosure Procedure Act, in its entirely, must be construed so as to promote the principle of union democracy. Vestal v. Hoffa, 329 F. Supp. 801 (M.D. Tennessee - Nashville Div. 1971) reversed on other grounds, 451 F. 2d 706, cert. denied. 406 U.S. 934 (1972). Navarro v. Gannon, 385 F. 2d 512, (2nd Circ. 1967). American Federation of Musicians v. Wittstein, 379 U.S. 171 (1964)

The essential purpose of the statute is to broaden, not constrict democratic safeguards for union members. Graham v. Soloner, 220 F. Supp. 711 (D.C. Pa. 1963)

Reading the Union Constitution and the Offshore Division By-Laws in the light of such cases, buttresses the conclusion of the International Convention and the Court below that the Constitution of this Union does not establish an autocracy with the powers of the President as claimed by him above.

CONCLUSION

On the basis of the contents of the brief submitted on behalf of the Union and its subordinate body, the Offshore Division, and on the contents hereof, and based upon the reasons and authorities set forth therein and herein, it is respectfully submitted that the District Court's finding of fact and conclusions of law are totally supported by the record and are correct, and the Court's decision below should be affirmed in all respects.

Respectfully submitted,

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